83-569

No. _____

Supreme Court, U.S.
FILED
AUG 29 198
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ARTHUR G. HAGEMAN, PRO SE,

PETITIONER.

V.

HOME INSURANCE
HOME CAPITAL SERVICES,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ARTHUR G. HAGEMAN
20 WEST 64TH STREET
NEW YORK, NEW YORK 10023
PRO SE PHONE (212) 595-2787
OR (212) 595-2840

QUESTIONS FOR REVIEW

(1) The question aimply stated: "Was Mr. Burns a reliable witness and was he truthful when he denied having stated to the Plaintiff that he (the Plaintiff) was too old for promotion because of the company's policy not to hire or promote a person of the Plaintiff's age?"

The Court stated that Mr. Burns was credible because he had been fired (according to Mr. Burns's testimony) by the Defendants and was of course no longer in their employ.

The Plaintiff appealed, citing perjury by the witness, but the Court refused to vacate the judgement.

(2) At what period of time in the trial did the Plaintiff become aware of the perjury committed by the witnesses for the Defendants, and at what period of time was it mandatory for the Plaintiff to challenge the

witnesses for the defense concerning their act of perjury. The Plaintiff had evidenced his lack of knowledge concerning the true relationship of Mr. Burns and the Defendants by requesting discovery of company records on this relationship. Mr. Burns was the Plaintiff's immediate superior; however, the records of Mr. Burns were denied to the Plaintiff. Did the District Court abuse its discretionary power in refusing the records and then basing its decision on the objectivity of Mr. Burns? Did the Court abuse its discretion in refusing a new trial because of perjury by Mr. Burns and the other witnesses, giving as a reason for said denial Plaintiff's knowledge of the facts at the time of their testimony?

(3) Is it the legal responsibility of the attorneys for the Defendants to report the perjured testimony to the Court?

In the present case the attorneys for the defense condoned this perjured testimony and in fact the testimony was so similar in content that the attorneys must have coached the witnesses in presenting their testimony. Does this action on the part of the Defendant's attorneys constitute fraud on the Court?

(4) Request for the Supreme Court to decide the merit of the issue based on the case of KROCK V. ELECTRIC MOTOR & REPAIR COMPANY, U.S. Court of Appeals, First Circuit.

(5) The Supreme Court should review Rule 60(b), Fraud on the Court, as it pertains to perjury and other fraudulent acts by attorneys representing corporations. It should be required that the attorneys report perjury and other acts of fraud to the Court and the stockholders. The corporate officers and directors are merely agents

for the stockholders, and they as well as the attorneys representing them should not be permitted to conceal their fraudulent acts.

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TABLE OF AUTHORITIES

KROCK V. ELECTRIC MOTOR & REPAIR COMPANY, 339 F.2d 73 (1ST CIR.) CERT. DENIED, 377 U.S. 934 (1964) 339 F.2d AT 74 (CASE CITED BY PLAINTIFF).

MASTINI V. AMERICAN TELEPHONE & TELEGRAPH CO., 369 F.2d 378, 379 (2ND CIR., 1966). (CASE CITED BY U.S. DISTRICT COURT).

Endorsement

Hageman v. Home Capital Services, Inc., et al.
80 Civ. 1934

Plaintiff has moved for relief from judgment pursuant to Rule 60, Fed. R. Civ. P, and alleges fraudulent testimony by certain witnesses for defendants. The court finds that the facts plaintiff alleges as the basis of the claim of fraud were known to him well before the trial of this action and therefore would have formed an appropriate subject for cross-examination of these witnesses. Plaintiff will not be permitted to relitigate the merits of his claim under the guise of a Rule 60(b) motion. See Mastini v. American Telephone & Telegraph Co. 369 F2d 378, 379 (2d Cir. 1966).

Plaintiff's motion therefore is denied. Defendants' request for an award of attorneys' fees and costs for defending this motion also is denied.

So ordered.

(Signed) LEE P. GAGLIARDI
U.S.D.J.

LPG

Dated: New York, New York
January 11, 1983

STATE OF NEW YORK
COUNTY OF NEW YORK
SUBSCRIBED AND SWORN TO
BEFORE ME THIS....11.DAY
OF.....A.....19

JOSE A. VEGERANO, JR.
Notary Public, State of New York
No. 31-4713153
Qualified in New York County
Commission Expires March 30, 1984

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 31st day of May, one thousand nine hundred and eighty-three.

Present:

HONORABLE WILFRED FEINBERG
Chief Judge

HONORABLE J. EDWARD LUMBARD

HONORABLE RALPH K. WINTER
Circuit Judges

----------x

ARTHUR HAGEMAN,

Plaintiff-Appellant,

- against -

THE HOME INSURANCE COMPANY and HOME CAPITAL SERVICES, INC.

Defendants-Appellees.

----------x

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by the appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED.

In April 1980, appellant Arthur Hageman brought suit against appellees The Home Insurance Company and Home Capital Services, Inc., under the Age Dioscrimination in Employment Act. The case came on for trial before Judge Gagliardi in June 1981. On June 18, 1981, in a lengthy opinion read into the record, Judge Gagliardi found that appellant failed to prove his allegations of age discrimination. In an opinion dated April 5, 1982, Judge Gagliardi rejected appellant's claim that the appellees had threatened to discharge appellant

in retaliation for the initiation of the age discrimination suit. On June 8, 1982, the district court denied appellant's motion for a new trial. Finally, on January 11, 1983, the district court denied appellant's Rule 60 motion to vacate the judgment.

Appellant is now apparently seeking to appeal the denial of his Rule 60 motion. We find this appeal without merit, substantially for the reasons stated in the last opinion of Judge Gagliardi.

The judgment of the district court is affirmed.

(Signed) WILDRED FEINBERG
WILFRED FEINBERG,
Chief Judge

(Signed) J. EDWARD LUMBARD
J. EDWARD LUMBARD,

(Signed) RALPH K. WINTER
RALPH K. WINTER,
Circuit Judges.

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ORE ME THIS...DAY
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JOSE A. VEGERANO JR.
ary Public, State of New York
No. 31-4716468
ualified in New York County
nission Expires March 30, 1984

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. _____

ARTHUR G. HAGEMAN, PRO SE,

PETITIONER,

V.

THE HOME INSURANCE COMPANY
HOME CAPITAL SERVICES, INC.

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Petitioner, ARTHUR G. HAGEMAN, respectfully prays that a Writ of Certiorari issue to review the judgement of the United States Court of Appeals for the Second Circuit entered on 31 May 1983.

JURISDICTION

On 31 May 1983 the Court of Appeals entered judgement affirming the denial of the Petitioner's motion under Rule 60(b) to vacate the judgement of the District Court. The jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1254.

STATUTORY PROVISIONS INVOLVED

U.S.C.A.

18 - 241. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

(June 25, 1948, c. 645, 62 Stat. 696; Apr. 11, 1968, Pub.L. 90-284, Title I, #103(a) 82 Stat. 75

U.S.C.A.
18 - 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 749.

U.S.C.A.
18 - 1621. Perjury generally

Whoever, having taken an oath before a competent tribunal, officer, or person,

in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years or both. This section is applicable whether the statement or subscription is made within or without the United States. June 25, 1948, c. 645, 62 Stat. 733; Oct. 3. 1964, Pub.L. 88-619, #1, 78 Stat. 995.

U.S.C.A.
28 - Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling him.

Pub.L. 93-595, # 1, Jan. 2, 1975, 88 Stat. 1934.

U.S.C.A. 611
28 - ~~Rule~~. Mode and Order of Interrogation and Presentation

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Pub.L. 93-595 #1, Jan. 2, 1975, 88 Stat. 1936.

U.S.C.A.
28 - 2071. Rule-making power generally

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct for their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court.

(June 25, 1948, c. 646, 62 Stat. 961; May 24, 1949, c. 139, # 102, 63 Stat. 104.)

STATEMENT OF THE CASE

In April 1980, Appellant ARTHUR G. HAGEMAN brought suit against The Home Insurance Company and Home Capital Services, Inc. under the Age Discrimination Act 29 U.S.C. Section 621 et seq. On June 18, 1981, Judge Gagliardi found that the Appellant failed to prove his allegations of age discrimination. In an opinion dated April 5, 1982, Judge Gagliardi rejected Appellant's claim that an "early warning letter" of the Appellees was in retaliation for the initiation of the age discrimination suit.

The Plaintiff was fired on January 3, 1982, and the Court's opinion was restricted to events prior to June 5, 1981.

On May 31, 1983 the Court of Appeals denied an appeal under Rule 60(b). The Court cited the last endorsement of Judge Gagliardi dated January 11, 1983 as the basis for denying the motion (Page 2).

The endorsement stated the Plaintiff knew the facts at the time of trial and the information could have been confirmed by cross-examination

ARGUMENTS FOR THE SUPREME COURT TO REVIEW THE CASE

The Plaintiff has filed a complaint and documentation with the U.S. Attorney for the Southern District of New York citing perjured testimony by the witnesses for the Defendants. During the conferences with the representative of the U.S. Attorney it became apparent that the Plaintiff may have confused the Court by emphasizing the motive for the perjury rather than the paramount issue of the case.

It is the purpose of the petition to state simply and clearly the merit of the appeal based on the District Court's endorsement dated January 11, 1983 (Page 2) and the opinion of the United States Court of Appeals for the Second Circuit dated May 31, 1983 (Page 4).

At the time of the trial, Plaintiff testified that he was denied a promotion and salary increase because of his age, and had been retaliatorily threatened with loss of his job because he filed a charge of discrimination and commenced this action. He testified that he was told by Ronald J. Burns, then Executive Vice-President of the Investment Department, that the position to which Plaintiff sought promotion would be better filled by a younger man. Mr. Burns testified that no such statement had been made.

At the conclusion of the evidence, the Court ruled in favor of Defendants on the issues of discriminatory salary and promotion, stating:

> One of the easiest ways of establishing (whether or not the defendant in fact did discriminate against the plaintiff due to his age) is a statement, if true, of an officer in a position to pass upon the advancement of the plaintiff, and whether or not such a statement was in fact made.

> Mr. Hageman claims that such a statement was made. Mr. Burns, when he testified, denied that any such statement was made by him.
>
> It is clear that the plaintiff has an interest in the outcome of the lawsuit. It is further clear that Mr. Burns has no such interest, having been fired by the defendant, and, of course, no longer in their employ.
>
> The Court, while it had the opportunity to observe all the witnesses here, finds that on that issue neither one was incredible, and if you are to balance the facts with respect to whether or not such a statement was made, you would have to conclude, the statements being of equal weight, that the plaintiff has not sustained the burden that any such statement was made.

It seems incredible that the Court could base its opinion on the perjured testimony of the witnesses for the Defendants and imply the perjured testimony should have been revealed to the Court through cross-examination of the witnesses because the Plaintiff supposedly knew the witnesses were lying at the time of their testimony. It would appear that in any trial the

injured party should be provided the minimum time of having heard all the testimony before it is mandatory for the injured party to challenge the credibility of the witnesses. It was only after the completion of the trial ,that the Plaintiff could establish a motive for the perjury. Furthermore, the District Court, in a pretrial conference denied the Plaintiff the assignation papers of Mr. Burns. It was the testimony of Mr. Burns, formerly Executive Vice-President, that the Court relied upon in rendering its judgement. The Court of Appeals also denied the Plaintiff access to the assignation papers of Mr. Burns which would indicate that Mr. Burns was compensated for his resignation. Furthermore, Mr. Burns had a continuing relationship with The Home Insurance Company during and after the Plaintiff's trial.

The perjury would have become apparent during the closing arguments after the wit nesses' testimony was compared; however, the

Court stated it saw no reason for closing arguments.

Mr. Sheridan's affidavit, in opposition to the Plaintiff's appeal for a new trial, also clearly contradicts the testimony of Mr. Burns and the other witnesses. (Mr. Sheridan was Executive Vice-President.) In the affidavit, Paragraph 3, Mr. Sheridan stated, "On December 31, 1979, Mr. Burns officially resigned as an officer of the Home."

There is also a conflict between the United States Court of Appeals, First Circuit, and the United States Court of Appeals, Second Circuit, in deciding when the perjury of a witness can be challenged. The District Court's opinion stated the Plaintiff was well aware of these facts at the time of the trial. The facts were not known to the Plaintiff at the time of the trial, but even if they were this fact alone is insufficient to preclude the

United States District Court, Second Circuit, from granting the Plaintiff's motion.

The Supreme Court should vacate the judgement of the District Court and the Court of Appeals for the Second Circuit, based on the merit of the issue and the opinion of the United States Court of Appeals, First Circuit, in the case of KROCK V. ELECTRIC MOTOR & REPAIR COMPANY.

In the case of KROCK V. ELECTRIC MOTOR & REPAIR COMPANY, 339 F.2d 73 (1ST CIR.) Cert. denied, 377 U.S. 934 (1964), defendants moved for a new trial, offering as newly discovered evidence material showing that a portion of the testimony of one of plaintiff's witnesses was untruthful. The District Court denied the motion, because it concluded that with further investigation, defendant could have ascertained the errors in this testimony which it sought now to present to the court. The Court of Appeals reversed, commenting:

> It is, of course, true that the federal pretrial discovery procedures are available for use, and conceivably in some particular case -- we express no opinion on this one -- failure to pursue them would be negligence on the part of counsel: But to determine, as the court apparently did, that neglect gives the other party carte blanche to introduce testimony that is mistaken or worse, insulated from any further proceedings, would be to accept an evil far graver than waste of this court's or litigant's time. Rather than the district court's position being "incontrovertibly" correct, as plaintiff would have us believe, we think it would establish a principle the far-reaching consequences of which we would find hard to support.

339 F2d at 74.

The case of MASTINI V. AMERICAN TELEPHONE & TELEGRAPH CO. 369 F2d 378, 379 (2d Civ. 1966) cited by the District Court is not similar to HAGEMAN V. HOME CAPITAL SERVICES, ET AL. In the case cited by the Court, the Plaintiff withheld certain documentation from the District Court to enhance his patent rights claim. Failing to prevail in the lower Court, the Plaintiff then at-

tempted to introduce the same documentation as new evidence at the Court of Appeals. The Court of Appeals denied the Plaintiff's appeal, estoppal.

In the case of HAGEMAN V. HOME CAPITAL SERVICES, INC. ET AL., the defendants committed perjury, introduced fraudulent information, misled the Court, and refused the Plaintiff's request for particular information even though the Plaintiff was a director and officer of the company. Furthermore, the appeal is not based on new facts or recently discovered evidence created after the trial. This conclusion is inherent in the Court's endorsement.

Finally, unlike the case cited by the Southern District Court, the testimony presented to the Court by the defendants was challenged by the Plaintiff, the defendants were cross-examined by the Plaintiff regarding their testimony, the truthfulness of the statements by the Defendants was de-

nied by the Plaintiff, and documentary evidence was exhibited refuting the witnesses' testimony.

This appeal under Rule 60(b) is based upon a fundamental principle of law: The Court is to seek the truth, trial lawyers are officers of the court who are morally and legally obligated to seek the truth, and perjury is a violation of this fundamental principle.

The Court's mistake in the time frame of Mr. Pinkney's testimony, a witness for the Plaintiff, completely altered the relevance of his testimony. As the result of this mistake, Mr. Pinkney's testimony aided the case against the Plaintiff. Mr. Heyert, the attorney for the Defendants, in a sworn statement made on May 13, 1982 in Paragraph 47 of the affidavit in opposition to the Plaintiff's "Motion for leave to file a Supplemental Complaint", says the following:

47. "The testimony of Fred Pinkney, a witness called by the Plaintiff, conclusively shows Defendants' non-discriminatory treatment of their employees. Mr. Pinkney, who is 59 years old, testified that in 1978 he went to see Mr. Burns and asked to be made an officer of Home Insurance or he would leave. Mr. Burns made him an officer and put Mr. Pinkney in charge of the special situation fund, which Mr. Pinkney considered to be "recognition of his ability" (Tr. 239-240). In 1980, after Mr. Pinkney announced his resignation, Mr. Smith begged him to stay and offered almost anything he wanted including a promotion, a bonus, more responsibility, a larger office and a more prestigious title (Tr. 249-251)."

The circumstances Mr. Heyert describes are true, but they occurred in 1977 before the discrimination started, not in 1978. Mr. Pinkney was the last employee to be promoted to an officer by Mr. Tullis, who was replaced by Mr. Huang as President. In 1978, Mr. Burns summoned Mr. Pinkney to his office and offered him a consulting fee of a lesser amount than his salary for one year if Mr. Pinkney would resign. Mr. Pinkney asked why he should accept that offer and

Mr. Burns said he was too old to be promoted or receive a raise. Mr. Pinkney refused and said he would sue if he were fired. Six months before the Plaintiff's trial, they offered Mr. Pinkney "almost anything he wanted." The one and only thing Mr. Pinkney wanted was a Vice Presidency in The Home Insurance Co., which they did not offer. Mr. Pinkney said, "After the way the company treated me earlier, no offer would be sufficient for me to remain with the company." It should be the legal duty of Mr. Heyert, as an officer of the Court, to correct the transcript; if not, the minimum moral standard would require that he not perpetuate the inaccurate opinions.

CONCLUSION

The Plaintiff believes the Supreme Court should vacate the judgement of the District Court and the U.S. Court of Appeals because the courts did not follow accepted and usual course of judicial proceedings.

Furthermore, the decision rendered by the U.S. Court of Appeals, Second Circuit, was in conflict with the U.S. Court of Appeals, First Circuit.

The Respondents will claim these charges are frivolous, but the commitment of a felony is not frivolous; nor was the firing of the Plaintiff within six months after the case was tried in Federal Court and ninety days prior to the Plaintiff's eligibility for retirement a frivolous act.

The action by the Defendants denied the Plaintiff his pension income.

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JOSE A. VEGERANO, JR.
Notary Public, State of New York
No. 31-4719153
Qualified in New York County
Commission Expires March 30, 1984

ARTHUR G. HAGEMAN, PRO SE
20 WEST 64TH STREET
NEW YORK, NEW YORK 10023
September 29, 1983

STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE SUPREME COURT OF THE
UNITED STATES ON APPEAL FROM
THE UNITED STATES COURT OF
APPEALS FOR THE SECOND
CIRCUIT (CASE # 83-7167).

On September 29, 1983, the Petitioner served the within Petition ~~and Appendix~~ P/A upon Kelly, Drye and Warren at 101 Park Avenue, New York, New York 10178, the address designated by said attorney for the purpose of depositing three copies of the same enclosed in a registered, first class, postpaid properly addressed wrapper in the Wall Street Branch of the U.S. Post Office depository under the exclusive care and custody of the United States Postal Service within the State of New York.

STATE OF NEW YORK
COUNTY OF NEW YORK
SUBSCRIBED AND SWORN TO
BEFORE ME THIS 29th DAY
OF September 1983

JOSE A. VEGA-RANO, JR.
Notary Public, State of New York
No. 31-4713153
Qualified in New York County
Commission Expires March 30, 1984

Arthur G. Hageman

ARTHUR G. HAGEMAN, PRO SE
20 WEST 64TH STREET
NEW YORK, NEW YORK 10023

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